

**From:** John Lemke  
**To:** Microsoft ATR  
**Date:** 11/17/01 2:30pm  
**Subject:** Repeat offenders needed tougher sentences

Dear Department of Justice:

I have read the recent ruling and proposed resolution to the Microsoft anti-trust case. It is my strong belief that the proposed remedy will have almost NO IMPACT on the current market abuses by Microsoft.

There are three items in the proposed remedy that need to be brought to light:

- Microsoft was given a similar ruling in 1995 to disallow the bundling of Internet Explorer and Windows, in an attempt to prevent Microsoft from illegally leveraging its Desktop OS monopoly into the Web Browser market. Six years later, we see that Internet Explorer has over 90% of the web browser market. The Department of Justice FAILED to prevent Microsoft from illegally extending its monopoly into the Web browser market.

- Microsoft has dealings with OEMs which prevent them from installing any other operating system except for Windows on a new PC. The proposed remedy makes it more difficult for Microsoft to continue doing this. However, the issue that it fails to address is this: What other operating system would OEMs install? There could have been an opportunity two years ago to help out Be, Inc. gain a foothold with its superb desktop OS, but they are gone now due to Microsoft's abuse. This leaves Linux, (which is either a toy for hobbist geeks or a server operating system), or OS/2. It's doubtful that OEMs would want to install either of these on a desktop PC. Thus we see that the Department of Justice IS FAILING to prevent Microsoft from continually reaping the benefits of its past illegal behaviour.

- The proposed remedy makes a provision to force Microsoft to disclose protocols to qualified 3rd parties for the purpose of interacting with its software. This alone could have been the single most important part of the remedy, if it hadn't been de-clawed by the "Security" except granted later on. Microsoft can propose that its implementation of the SMB / NetBIOS protocol uses password encryption, whose protocol cannot be published due to security concerns. Therefore, Microsoft will continue to keep that protocol a secret, and use it to enhance interoperability between Windows systems and destroy / eliminate interoperability with non-Microsoft systems. (such as Unix / Samba) The security clause in the remedy MUST BE REMOVED, or the Department of Justice WILL FAIL to prevent Microsoft from leveraging its desktop monopoly into a communications protocol monopoly.

Thus we see how the Department of Justice has failed, is currently failing, and will continue to fail to protect the industry from Microsoft, unless the proposed remedy is altered significantly to address past abuses, current abuses, and future abuses that inevitably will happen. I propose the following:

- Microsoft be forced to disclose every protocol used for communication between two PCs, or between

two separate services or programs on a single PC. This disclosure will be UNCONDITIONAL, regardless of the protocol's intended or actual use. (Note that this will not require the disclosure of encryption keys.) The availability documentation for said protocols must be prominently displayed on <http://www.microsoft.com>, and endorsed as enthusiastically as the current flagship product. The documentation must be available for free download in a simple, open format (such as HTML 1.0, or plain text), and must also be available for hardcopy, costing no more than the printing and shipping cost.

- Microsoft be forced to not make \_any restriction whatsoever\_ on the freedom of OEMs to modify, change, add to or delete from the hard drive of the system which they sell. OEMs must be given the ability to modify any and all parts of the PCs hard drive, regardless of whether that section of the hard drive contains a Microsoft product or a non-Microsoft product.

- To address the benefits that Microsoft currently enjoys due to past abuses: Microsoft be forced to make known the availability of competing software products. (such as Red Hat Linux, Sun StarOffice, and Opera Software) The method by which Microsoft makes these products known shall be up to them, provided that they, at a minimum, display a link to at least one competing product on their home page for EACH of their own products featured on the same homepage. The link to the competing product must be as prominent and enthusiastically displayed as the link to Microsoft's own product. This specific remedy shall be in place for 3 years.

While it is doubtful that my proposed changes would have a significant impact on the Desktop OS monopoly, it would raise awareness of the availability of competing products and ensure that those products are able to interoperate with Microsoft's. It is my hope that the Department of Justice will consider these changes and avoid falling into the same pitfall which they previously have, are currently, and are about to fall into.

Sincerely,  
John Lemke